

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

KEVIN GRAHAM,

Defendant.

NELSON S. ROMÁN, United States District Judge

No. 14-CR-500 (NSR)-03
ORDER AND OPINION

17 cv 5967 (NSR)

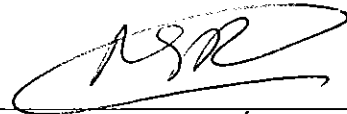
By Order and Opinion ("Order"), dated February 7, 2018, this Court denied Defendant Kevin Graham's motion pursuant to 28 U.S.C. § 2255 to, *inter alia*, vacate his conviction and to set aside his sentence as excessive. (ECF No. 9.) Upon review of the moving papers and the Order, the Court determines that Petitioner has not made "a substantial showing of the denial of a constitutional right," such that a certificate of appealability will not be issued. 28 U.S.C. § 2253; see *Lucidore v. N.Y.S. Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)) ("a 'substantial showing' does not compel a petitioner to demonstrate that he would prevail on the merits, but merely that the issues involved in his case 'are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.'"); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). The Court further certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this judgment on the merits would not be taken in good faith, see *Coppedge v. United States*, 369 U.S. 438, 445 (1962) ("We consider a defendant's good faith . . . demonstrated when he seeks appellate review of any issue not frivolous."); *Burda Media Inc. v. Blumenberg*, 731 F. Supp. 2d 321, 322-23 (S.D.N.Y. 2010) (citing *Coppedge* and noting that an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith). Petitioner may still avail himself of the procedures for seeking a certificate from the court of appeals. See 28 U.S.C. §§ 2254 & 2255 (Rule 11); see, e.g., *United States v. Whitman*, 153 F. Supp. 3d 658, 659 (S.D.N.Y. 2015).

Copies mailed faxed 5/29/2018
Chambers of Nelson S. Román, U.S.D.J.

This constitutes the Court Opinion and Order.

May 29, 2018
White Plains, New York

SO ORDERED:

A handwritten signature in black ink, appearing to read 'NSR', is written over a horizontal line.

NELSON S. ROMÁN